

CAPs, Communities, and Stewardship: An Outsider's Thoughts on the Role of Damage Assessments in Resource Stewardship.

June 9-10, 2004

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I was a stranger to the cooperative assessment process when I first learned about it and so held no preconceived notions about what it was, much less what it could be. I was such a stranger, in fact, that we (the Coalition to Restore Coastal Louisiana) were several months into the process before realizing that we were part of the process, and several months more before learning that involvement of outside interests, that is someone other than the trustee agencies and the responsible party, is unusual. As the representative of a collection of community and environmental stakeholders we did not know there was a specific term for this process, we just knew that Bayou Trepagnier and its associated wetlands (located just outside of the New Orleans metropolitan area) had been contaminated and needed to be cleaned up. We also knew that we needed to be at the table to help forge and ultimately understand whatever actions were, or were not, taken.

There was a lot of history involved in this site and cooperation was not the term that had characterized most of that history. Simply put, years of discharges from Shell's refining complex had left the Bayou and its banks heavily contaminated by metals, PAHs and oil and grease. At the time most of the contamination occurred there were few laws in place to protect the Bayou or regulate the discharges—there were also too few folks who recognized the importance of waterways like Bayou Trepagnier to the health and survival of coastal Louisiana. (more on that in a moment). By the mid 1970s it had become clear that the Bayou was heavily contaminated and by the mid to late 1980s the State of Louisiana and EPA began to look at Bayou Trepagnier. But as things unfolded, it became clear that something interesting was happening, that there was some real value to the cooperative assessment process (CAP) and some lessons being taught. One piece of history is critical, however, to understand why we got involved and why we think a more inclusive approach to CAPs can be valuable, even essential.

Since 1900 more than one quarter of the wetlands of the vast estuarine system in south Louisiana, more than 1 million acres, have vanished due to a combination of human induced causes—levees, canals, mineral extraction—that now threaten the viability of life in this region. Unless this system is reengineered to restore some sense of vitality and sustainability, while still providing flood protection, navigation and other economic activity, it will continue to disappear at the rate of nearly 25 square miles each year.

Spurred by community pressure, a suite of state and federal agencies have now developed a conceptual plan for the rehabilitation of coastal Louisiana, a plan that includes the

Bayou Trepagnier area. Despite the fact that those state and federal agencies included all of the trustee agencies charged with the remediation and restoration of Bayou Trepagnier, none of the clean up planning for Bayou Trepagnier took note of that over-arching plan or considered how action taken on Bayou Trepagnier could advance or hinder it. In a world where agency programs are balkanized and where actions are driven by a need to close cases (on the part of trustees) and minimize liability (on behalf of the responsible party) such results are not surprising. But that doesn't make it acceptable.

In such cases an interested third party may be necessary to serve as a catalyst or a bridge to broach certain issues or reach certain resources or decision makers. Indeed, we found that though we had, by far, fewer resources than anyone else at the table we often had an easier(not to be confused with easy) time reaching across agency or corporate boundaries to engage broader programs and higher levels of management than did the trustee and company representatives.

So what have we learned so far that might possibly be of interest to anyone? To be honest, it is still not totally clear. In the case of Bayou Trepagnier, the process has led to fairly consensual assessment of the scope of damage and the sorts of steps that should be considered to remediate and restore the site. But no final solution has been agreed on, much less implemented, so we don't know how successful we will feel this entire undertaking has been when all is said and done. There will always be a potential disconnect between the assessment and the final action, a fact that must be kept in mind. In short, the assessment may be a success but the patient may still die.

Given the fact that before the CAP approach was agreed on in our case we were headed down the all too familiar road of dueling media campaigns, litigation, and deepening distrust where a fortune in money, time and energy would be spent without any benefit to the natural resource or community ever accruing, it is clear that something valuable and worth noting has happened. We are now part of a process that is trying to link the remediation and natural resource damage recovery process to the longer term plans for the area. To the extent this process is working, it is because of a few key features, features that may be helpful in shaping more effective CAPs elsewhere.

1. Be clear on why everyone is there. No CAP process can succeed if there is confusion on this point. Just having folks at the table does not make them part of a process; they need to be there for a reason which is clear to everyone. As inclusion in the CAP process broadens this becomes increasingly important. Do not let anyone be confused about the purpose of the CAP. Cooperation is not an end unto itself. This is dispute resolution and everyone there has some duty to discharge and some interest to protect.
2. Get the right people to the table. If you do not get all of the necessary players to the table, lots of time and resources can be spent without resolving anything. As comprehensive resource planning becomes more common (ala the Everglades and coastal Louisiana) the need for broader agency, corporate and community involvement in the resolution of natural resource damage cases will also become more common. Do not assume that just because you have one representative from

- an agency that you have that agency fully engaged. Similarly, never assume that just because a single environmental or civic group has been invited to the table that the rest of the community will feel it is represented. This is not a situation in which one gets to pick partners. Inclusion should be based on the right of the party to be at the table or the value that the party can contribute.
3. Be clear on everyone's authority. This is a negotiation and the folks at the table will usually only have limited ability to agree to anything without someone else's approval. In a traditional CAP it may be less necessary to focus on the authority issue because of established patterns of practice but when broader institutional or community participation is involved it is essential. If the CAP process takes on the tone of car buyer negotiating a deal with a salesperson, only to find that the manager has to approve (and renegotiate) the deal, don't expect happy results.
 4. Share the information and technical expertise. The CAP is an adversarial process, not one based on mutual trust and shared vision. But that doesn't mean it has to be acrimonious and that trust can't be built—indeed that will ideally be one of the ultimate outcomes. There needs to be an open sharing and discussion of the information and technical expertise that shape the recommended action. Indeed, the ultimate success of the process may well turn on the degree to which the least technically proficient player at the table feels it has had a fair chance to understand and react to the information. In some cases it may be necessary to help those players gain access to technical assistance so that they are able to be comfortable with the data and the recommended action. The general alternative to informed consent is opposition, not uninformed consent.
 5. Have ground rules but no preconditions. This should perhaps be obvious but it bears stating. For a CAP to work, at least in cases like ours, it is essential to establish the ground rules for how the process will work. This can include how and when meetings will be held, how communications will be handled, and how information will be shared. In our case we all agreed not to simultaneously try our cases in the media, not so much as gesture of goodwill or even as a binding commitment, but rather as part of a no surprises policy that we believed was essential to the CAP.
 6. Finally, guidelines are one thing, preconditions are another. If anyone has to surrender their rights to get to the table, it is not longer a cooperative process—which may be fine but don't confuse such processes with a CAP. In our case, had we been told we had to give up our right to go to the media or drop our right to go to court, there would have been no CAP—at least not one that would have included us.

I offer these six observations as just that; they are not rules nor guarantees of success. Indeed, in many cases there may be a number of factors that don't make cooperative action possible—or even desirable. Sometimes the disparities between the parties, the degree to which the community is coalesced and has adequate access to resources, or even the degree to which policy or legal issues need to be settled, may make the CAP model unworkable. At the end of the day, cooperation is just one road to resource recovery, but where it may work it sure is worth trying.